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IN THE

Supreme Court of the United States

October Term, 1966

No. 292

ELIZABETH JOAN ALLEN and ALICE EDNA STUHMER, individually and as Executrices of the Estate of CHESTER A. ALLEN, Deceased,

Petitioners,

against

UNITED STATES OF AMERICA.

SUPPLEMENTAL MEMORANDUM FOR PETITIONERS

J. COURTNEY MCGROARTY,
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JOHN F. ANDERSON,
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of Counsel.

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The Government in its memorandum in opposition to the petition for the writ of certiorari maintains that the Circuit Court of Appeals affirmed the judgment of the district court on the basis of the reasoning of the district court, and attributes the affirmance of the judgment of the district court to the legal theory set forth in the opinion of the district court.

However, petitioners respectfully submit that the Circuit Court of Appeals rejected the District Court's legal reasoning. The attention of this court is respectfully directed to Appendix A, page 9, of petitioners' petition for the writ of certiorari. Note—The Circuit Court of Appeals said, "We reach the same result as the District Judge, albeit on a different ground.[6]". The court's attention is further directed to footnote No. 6 in the Circuit Court of Appeals opinion that "[6]The ground on which we rest here was not urged below but was briefed and argued in this

Court. But, if right on any theory, the Commissioner's determination should be sustained."

The Court of Appeals obviously sustained the Commissioner's disallowance but did not accept the legal basis applied by the district court.

Petitioners' appeal is from the decision of the Court of Appeals holding that the interest of the surviving spouse must be determined "at the crucial moment of decedent's death". The decedent's surviving spouse was entitled under decedent's will to a one-third interest in his estate whether she elected under Part II or accepted the alternate provision for her under Part I of his will. Petitioners maintain that the interest bequeathed qualified for the marital deduction because of Regulation 20-2056(e)-2(c) which allows for the contingency or necessity of a surviving spouse having to elect between alternate provisions of the will.

Respectfully submitted,

J. COURTNEY MCGROARTY,
Attorney for Petitioners.